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MICHAEL B MCNEIL 511 S MADISON STREET P O BOX 2417 BLOOMINGTON, IN 47402			EXAMINER SING, SIMON P	
			ART UNIT 2645	PAPER NUMBER 16
DATE MAILED: 03/11/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/366,114

Applicant(s)

STUART ET AL.

Examiner

Simon Sing

Art Unit

2645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-25,27-36,38 and 39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25,27-36,38 and 39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### ***Response to Declaration under 37 C.F.R. § 1.131***

1. Examiner Fan Tsang had a telephone interview with Mr. Michael McNeil on 02/19/04. Mr. McNeil stated that the Action sent 1/2/04 was too brief to explain why the 1.131 Declarations filed 6/13/03 and 11/17/03 failed to establish conceptions of the claimed invention. Examiner Tsang agreed to generate a new office action with detail reasons as to why the two Declarations are insufficient to overcome the prior art rejections. Also, Examiner would like to point out that the statement "the conception of invention was before Gisby (Feb. 1998) as evidenced by Exhibits A-L" on the Advisory sent 7/15/03 was incorrect. Please see the following response regarding the two Declarations.

2. Upon close review of the 37 C.F.R. 1.131 Declaration filed 6/13/03 (hereinafter First Declaration) with Exhibit A-P and the 1.131 Declaration filed 11/17/03 (hereinafter second Declaration) with the attached documents, examiner believes that the Declarations are not sufficient to overcome the rejections based on prior art references Gisby (U.S. Patent 5,943,416) and Shaffer (U.S. Patent 6,363,145).

3. The First Declaration, second paragraph stated that "the invention was conceived before February 17, 1998. This is evidenced by attached Exhibit A, ...". The following is the examiners' opinions regarding Exhibit A.

Exhibit A is a three page redacted presentation document.

The first page briefly stated "ISAM" includes "CAPS" and "SDHFA". It is noted that the whole document fails to explain what the "CAPS" stands for.

On the second page, only limited technical disclosure is found. The first paragraph states: "ISAM enables a firm to directly tie internal and external measurements ... ISAM evaluates individual operator performance with service and satisfaction in a valid and reliable manner". On the second paragraph, it states: "the ISAM system examined customer service in a call center would link a customer, their operator and a specific transaction". On the third paragraph, it states: "ISAM assesses customer satisfaction on a real-time basis ..." and the last paragraph states that: "ISAM is a measurement software to assess customer satisfaction". It appears that the "ISAM" is **an existing system** which is controlled by a software also called "ISAM" for evaluating operators performance in a real time basis and the "ISAM" system links a customer, operator and a specific transaction.

However, it is questionable that the "ISAM" system is the claimed system. No evidence shows that the "ISAM" includes all or most of the claimed features. Examiner fails to find support for "requesting the customer to provide feedback data before a communication like is terminate" and "monitoring the incoming feedback data after the requesting step" as stated in claims 1 and 8. Examiner further fails to find support regarding the limitation "triggering an action if the monitoring step detects a predetermined condition, and the predetermined condition includes ..." as recited in

claims 16 and 29. Examiner also believes that the limitations recited in claims 7 and 29 are not supported by this page.

On the third page, no technical information can be found.

Since MPEP section 2138.04 states: "Conception is established when the invention is made sufficiently clear to enable one skilled in the art to reduce it to practice without the exercise of extensive experimentation or the exercise of inventive skill", examiner believes the Exhibit A does not meet the standard as "sufficient clear" to enable one skilled in the art to reduce the claimed invention (i.e. all pending claims) to practice. In other words, one skilled in the art cannot make the claimed invention base on Exhibit A alone without the exercise of extensive experimentation. Exhibit A does not suggest the limitation of "requesting" (claims 1 and 8), "monitoring" and "triggering" (claims 16 and 29). Even applicants stated that the "ISAM brain map is a living document with many adds, changes and revisions" (see ISAM Documentation-Due Diligence, page 1, lines 6-7 submitted with the Second Declaration). It appears that the pending claims are reflecting the multiple modifications from the original "ISAM" concept. Examiner believes that the original "ISAM", i.e. Exhibit A or the so-called "ISAM brain map" (examiner fails to discover this "ISAM brain map" document in the submission) **fails to meet the standard** as stated in the MPEP regarding establishing the conceptions of the invention. Therefore, the second paragraph of the first Declaration and the Exhibit A do not provide enough evidences to support the statement that "the invention was conceived before Feb. 17, 1998".

4. Examiner further examined Exhibit B-P and found out that only Exhibit C was published before 2/27/98 with technical information. However, the technical information on this document is too brief and does not support the claimed invention (i.e. all the pending claims) either. Examiner believes Exhibit C alone or combining with Exhibit A do not provide enough evidences to support the statement that "the claimed invention was conceived before Feb. 17, 1998".

5. The Second Declaration with multiple documents were filed to demonstrate due diligence. However, the issue of diligence is mood because application's submission fails to show the concept has been developed before 2/27/98. See MPEP 715.07(a) states "diligence need not be considered unless conception of the invention prior to the effective date is clearly established". However, upon a brief review of those documents, it appears that applicants are diligence although the Declaration was not proper because it was not signed by all inventors.

6. Furthermore, if Exhibit A and C are documents that enable one skilled in the art to make and use the claimed invention as applicant stated, then those documents themselves appear to be 102(b) prior art references because the invention was described in a printed publication (i.e. presenting the claimed invention to a public company Volt Delta Corp) in this country, more than one year prior to the date of application. Also, the ISAM Documentation-Due Diligence (filed 11/17/03) stated "meeting and presentations" on 5/01/98 to an outside company i.e. VP Continental

Insurance appears to state some kind of "on sale" activity in this country more than one year prior to the date of application. Examiner suggests applicants to provide additional evidences to clarify this issue.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 1-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Gisby US 5,943,416.

7.1 Regarding claims 1 and 8, Gisby discloses a method and system for an automated customer survey in a call center. Gisbe teaches that a customer is queried

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about service satisfaction and agent's performance (column 2, lines 13-21). Gisby also teaches:

connecting a caller to a live agent 31 in a call center [service provider] via switch 21 [communication server];

providing a service by the agent to the caller (column 1, lines 14-19; column 7, lines 2-6, 15-16);

requesting the caller to provide feedback data [survey] before hung up (column 5, lines 27-34); column 7, lines 2-6) and

associating the feedback data are with communication server data such caller ID (column 6, lines 56-59), date, time and agent ID (column 2, lines 13-21).

7.2 Regarding claims 2, 9 and 10, Gisby teaches storing the communication server data (column 5, lines 53-57);

7.3 Regarding claims 3 and 11, Gisby teaches providing service to plurality of callers (column 5, lines 18-27) and requesting callers to participate in the survey is performed on an intermittent sampling basis (column 6, lines 36-49).

7.4 Regarding claims 4, and 12, Gisby teaches providing services, which inherently including directory service, airline ticketing, and hotel/restaurant reservation etc., to callers (column 1, lines 15-20).



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7.5 Regarding claims 5 and 13, it is inherent that an agent exchange information with a caller in order to provide service.

7.6 Regarding claims 6 and 14, Gisby teaches analyzing the communication server data and reporting the result of said analyzing (column 2, lines 13-21).

7.7 Regarding claims 7 and 15, Gisby teaches receiving feedback data from a caller via either voice recognition or touch tone input (column 4, lines 63-67).

8. Claims 16-19, 22-26, 29-31 and 34-37 are rejected under 35 U.S.C. 102(e) as being anticipated by Shaffer et al. US Patent No. 6,363,145.

8.1 Regarding claim 16, Shaffer discloses a method for automated call monitoring in figures 1-3. Shaffer teaches:

establishing a communication link originated by a customer to a live agent of a service provider (column 2, lines 36-38; column 4, lines 17-18);

monitoring an exchange of information relating to a service (column 2, lines 38-42; column 4, lines 34-43; column 6, lines 25-28);

transferring the customer to a supervisor [triggering an action] (column 6, lines 33-35; column 8, lines 7-11) if a predetermined condition is detected (column 4, lines 48-52; column 7, lines 10-18); and

the supervisor inherently will ask (request) the customer for feedbacks regarding the service, such as what has happened between the live agent and the customer.

8.2 Regarding claim 17, Shaffer teaches that the communication link is an ISDN (column 4, lines 6-11).

8.3 Regarding claim 18, Shaffer teaches that the predetermined condition includes a change in voice volume (column 6, lines 43-44; column 7, lines 10-18).

8.4 Regarding claim 19, Shaffer teaches that the exchange of information between a customer and a live agent (column 2, lines 36-38; column 4, lines 17-18), and the predetermined change includes a change in tonal quality in utterances originating from either the customer or the agent (column 4, lines 44-51).

8.5 Regarding claim 22, Shaffer teaches alerting a supervisor [another live agent], before the communication link is terminated (column 5, lines 46-50).

8.6 Regarding claim 23, Shaffer teaches alerting a supervisor [second live agent] before the communication link is terminated (column 5, lines 46-50; column 6, lines 48-52).

8.7 Regarding claims 24 and 25, Shaffer teaches using a recorder to record detected voice data patterns (column 7, lines 25-32), and it is inherent that the recorded voice data patterns are associated with the identity of the live agent for tracking his/her performance.

8.8 Regarding claim 26, as discussed in claim 16, the feedback requested by a supervisor, inherently associated with of the identity of the live agent.

8.9 Regarding claim 29, Shaffer discloses an apparatus for automated call monitoring in figures 1-3. Shaffer teaches:

- a communication link originated by a customer to a live agent of a service provider (column 2, lines 36-38; column 4, lines 17-18);

- an exchange of information relating to a service (column 6, lines 25-28);

- a monitoring device coupling to said communication link (column 4, lines 34-43);

- a triggering action for transferring the customer to a supervisor (column 6, lines 33-35; column 8, lines 7-11) if a predetermined condition is detected (column 4, lines 47-51; column 7, lines 10-18); and

- a customer feedback system [supervisor] requesting feedback from the customer. The supervisor inherently will ask the customer for feedbacks regarding the service, such as what was happened between the live agent and the customer.

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8.10 Regarding claim 30, Shaffer teaches that the communication link is an ISDN (column 4, lines 6-11).

8.11 Regarding claim 31, Shaffer teaches that the predetermined condition includes a change in voice volume (column 6, lines 43-44; column 7, lines 10-18).

8.12 Regarding claim 34, Shaffer teaches alerting a supervisor [another live agent], before the communication link is terminated (column 5, lines 46-50).

8.13 Regarding claim 35, Shaffer teaches using a recorder to record detected voice data patterns (column 7, lines 25-32).

8.14 Regarding claim 36, Shaffer teaches using a recorder to record detected voice data patterns (column 7, lines 25-32), and it is inherent that the recorded voice data patterns are associated with the identity of the live agent for his/her performance.

8.15 Regarding claim 37, as discussed in claim 29, Shaffer teaches transferring [triggering action] the customer to a supervisor [customer feedback system] before said communication link is terminated.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al. US 5,402,474 in view of Strickland US 3,689,930.

Miller discloses a method and system for storing telephone transaction information in an archive server. Miller teaches:

a customer at telephone 123 initiates a call to a call center, and establishes a communication link with one live agent at telephone 107 (column 3, lines 33-45; column 5, lines 13-16, 67; column 6, lines 1-8);

the agent provides service to the customer (column 5, lines 55-59; column 6, lines 33-39).

In the Miller's reference, the agent interviews the customer and receives a customer's comment indicating whether the customer is happy with the service or not, the comment (feed back data) and other information regarding the call are then entered into the archive server (column 5, lines 21-29; column 7, lines 16-38; column 13, table 6).

Miller fails to explicitly teach that that the comment is provided to the agent upon a request during the interview.

However, Strickland teaches that customer service providers survey their customers, concerning the goods and services have been conducted, through personal interviews (column 1, lines 4-11).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Miller's reference with the teaching of Strickland, so that a the customer comment would have been received upon a survey (request) during the interview, because such a modification would have enabled a service provider to gather customers' feedbacks in order to improve its service accordingly.

10. Claims 16 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dezonno US Patent No. 5,737,405 in view of Fedorov et al. US Patent No. 6,047,060.

Dezonno discloses method and system for monitor speech patterns of a customer and a live agent of a call center. Dezonno (405) teaches a monitoring circuit for monitoring the audio signal power of a conversation between the customer and the agent, and if an interruption is detected, a supervisor is notified (column 4, lines 27-67; column 5, lines 1-38; column 1, lines 47-65). Dezonno fails to teach requesting feedbacks from the customer by the supervisor (customer feedback system).

However, Fedorov discloses a method and system for interactive monitoring calls to a call center, Fedorov teaches that in the prior art (known to the public or published at the time Fedorov files his application), when monitoring a call to the call center, a

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supervisor may break into the conversation between a caller and an agent, or the call may be transferred to the supervisor (column 2, lines 48-50), such as there is a disagreement (column 2, lines 51-53), request feedbacks from the caller regarding the call and service (column 2, lines 65-67; column 3, lines 1-2).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Dezonno's reference with the teaching of Fedorov, so that a call with interruptions, such as a disagreement or an argument between a customer and an agent, would have been transferred to, or taken over, by a supervisor, and the customer would have been requested feedbacks to provide information regarding the service to the supervisor, because such a modification would have provided the supervisor with first hand information to resolve the disagreement or argument.

11. Claims 20, 21, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaffer et al. US Patent No. 6,363,145 in view of Campbell et al US Patent No. 6,427,002.

11.1 Regarding claims 20, 21 and 32, Shaffer teaches monitoring call session between a live agent and a customer, and triggering [transferring the customer to the supervisor] a predetermined action if a predetermined condition occurs. Shaffer fails to

teach that the predetermined condition includes a predetermined word, utters by either the customer or the agent.

However, Campbell discloses a voice response service note. Campbell teaches routing a customer's incoming call to a call center (column 1, lines 52-55; column 3, lines 54-63), monitoring the incoming call, and alarming a management workstation (column 8, lines 9-16). Campbell also teaches voice recognition (column 4, lines 41-45; column 5, lines 23-31), collecting caller's input and transferring an incoming call (column 5, lines 17-23; column 8, lines 7-9).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Shaffer's reference with the teaching of Campbell, so that a voice recognition unit would have been included to recognize a customer's word from an utterance, such as "supervisor" from "transfer me to your supervisor" or "I want to talk to your supervisor", for requesting a transfer to a supervisor when the customer was frustrated with the live agent, because such a modification would have enabled an immediately transfer of an incoming call to a supervisor.

11.2 Regarding claim 33, Shaffer teaches monitoring call session between a live agent and a customer, and transferring [triggering] a call to a supervisor if a predetermined condition occurs. Shaffer fails to teach that the predetermined condition includes a key entry recognition subsystem.

However, Campbell discloses a voice response service note. Campbell teaches routing a customer's incoming call to a call center (column 1, lines 52-55; column 3, lines 54-63), monitoring the incoming call, and alarming a management workstation



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(column 8, lines 9-16). Campbell also teaches collecting DTMF input from a telephone keypad (column 8, lines 7-9).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Shaffer's reference with the teaching of Campbell, so that a key entry recognition unit would have been included, because such a modification would have enabled a live agent to initiate a transfer from his telephone keypad if a supervisor's involvement would have been necessary.

12. Claims 27, 28, 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaffer et al. US Patent No. 6,363,145 in view of Maloney et al US Patent No. 5,696,811.

Shaffer teaches monitoring call sessions between live agents and customers and transferring [triggering] a call to a supervisor [another live agent] if a predetermined condition occurs. Shaffer fails to teach monitoring call sessions on an intermittent sampling basis.

However, Maloney discloses a method and system for automatically monitoring the performance quality of call center agents in figures 1-11. Maloney teaches monitoring call sessions intermittently (column 5, lines 17-24).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Shaffer's reference with the teaching of Maloney, so that the monitoring would have been done on an intermittent sampling basis, because

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such a modification would have enabled a system with limited monitoring devices to monitor all agents.

**Conclusion**

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Simon Sing whose telephone number is (703) 305-3221. The examiner can normally be reached on Monday - Friday from 8:30 AM to 5:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang, can be reached at (703) 305-4895. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4750.



S.S.

03/04/2004

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